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GREER, BURNS & CRAIN 300 S WACKER DR 25TH FLOOR CHICAGO, IL 60606			EXAMINER	
			GATES, ERIC ANDREW	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARC VINCENT MARINI, VANCE E. ROE, MATTHEW CARR, GARY SINCLAIR, and GAVIN WRIGHT

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Appeal 2009-007134  
Application 10/760,110  
Technology Center 3700

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Decided: June 21, 2010

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*Before:* LINDA E. HORNER, JENNIFER D. BAHR, and KEN B. BARRETT, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

#### STATEMENT OF THE CASE

Marc Vincent Marini et al. (Appellants) appeal under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-4. Claims 15-25 have been withdrawn from consideration. The Examiner has indicated that claims 5-14 contain allowable subject matter. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

#### *The Invention*

Appellants' claimed invention is directed to a tool-less blade clamping apparatus for a reciprocating tool. Spec. 3:2-4.

Claim 1, reproduced below, is illustrative of the claimed invention.

1. A tool-less blade clamping apparatus for a reciprocating tool of the type which has a reciprocating plunger with at least one radially oriented aperture and a blade receiving slot at its forward end for receiving a blade of the type which has a shank portion with a hole and outwardly extending shoulders on opposite sides thereof between the distal end of the shank and a blade portion, the shank being configured to be inserted in the slot, the apparatus being configured to be attached to the plunger and having an opening for receiving the blade shank therein and in the slot, said apparatus comprising:

    said apparatus having an unclamped position and a clamped position wherein the shank portion of the blade can be inserted into said opening when it is in said unclamped position and be securely retained therein with the shoulders engaging the apparatus when in said clamped position;

    said apparatus being biased toward said clamped position;

said apparatus being configured to maintain its unclamped position when placed in said unclamped position;

    said apparatus being released when the shoulders of the blade shank portion engage said apparatus as the shank portion is inserted into said opening and slot a predetermined distance to thereby place said apparatus in said clamped position;

    said apparatus engaging the shoulders of the blade and pushing the blade shank portion outwardly when said apparatus is moved to said unclamped position.

*The Rejection*

The Examiner rejected claims 1-4 under 35 U.S.C. § 102(b) as anticipated by Kakiuchi (US 2002/0017026 A1 published Feb. 14, 2002).

**SUMMARY OF DECISION**

We AFFIRM.

**OPINION**

*Contentions*

The Examiner found that Kakiuchi describes each element of claim 1. In relevant part, the Examiner found that the clamping apparatus of Kakiuchi is released when the shank portion of a blade is inserted a predetermined distance and the shoulders of the blade engage the apparatus. Ans. 4. In addition, the Examiner found that the clamping apparatus of Kakiuchi pushes the blade shank portion outwardly when moved in the unclamped position. *Id.*

Appellants argue that the "end surface of the base [of the blade] is what causes the Kakiuchi clamp to move to the locking position" and that "the shoulders do not engage the apparatus as the shank portion is inserted into said opening." Appeal Br. 9; Reply Br. 5 (filed Nov. 10, 2008) (hereinafter First Reply Br.) (emphasis omitted). In addition, Appellants argue that the "shoulders also do not push the shank portion outwardly when said apparatus is moved to said unclamped position." First Reply Br. 5; Reply Br. 3 (filed Feb. 5, 2009) (hereinafter Second Reply Br.) (emphasis omitted). Appellant argues claims 1-4 as a group. Claims 2-4, therefore, stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

*Issue*

The dispositive issue in this appeal is whether Kakiuchi describes a tool-less blade clamping apparatus as recited in claim 1, and in particular whether Kakiuchi describes the clamping apparatus "being released when the shoulders of the blade shank portion engage said apparatus as the shank portion is inserted into said opening and slot a predetermined distance" into the apparatus and the apparatus "engaging the shoulders of the blade and pushing the blade shank portion outwardly when said apparatus is moved to said unclamped position."

*Findings of Fact*

We find that Kakiuchi describes a clamping apparatus wherein the apparatus is released (allowed to clamp) when the shank portion of a blade is inserted a particular distance into the opening. Kakiuchi, paras. 59-60; *see also* Ans. 4. When the blade is clamped, the shoulders of the blade contact (engage) the surface of the clamping apparatus to minimize the transmission of vibrations. Kakiuchi, paras. 73-74; *see also* Ans. 4. Thus, we find that

the shoulders of the blade in Kakiuchi are engaged with the apparatus if and only if the apparatus is in the released or clamped position.

In addition, we find that Kakiuchi describes a blade ejecting mechanism wherein the blade shank is pushed outwardly when the apparatus is moved into an unclamped position. *See* Kakiuchi, para. 66, noting spring 57 biases the blade lock control member 56 toward the front end of the rod 52, para. 62, noting how control member 20 pushes blade 3 out of the slot due to the biasing force of the spring 21; *see also* Ans. 4.

#### *Analysis*

The first limitation at issue requires that the apparatus be "released when the shoulders of the blade shank portion engage said apparatus as the shank portion is inserted into said opening ... a predetermined distance to ... place said apparatus in said clamped position." Appellants' argument relies on an interpretation of this limitation that requires that the shoulders push against the apparatus and move it a certain distance to cause the apparatus to release (clamp). Appeal Br. 9-10; First Reply Br. 5; Second Reply Br. 3. Therefore, Appellants' position, in essence, requires "as" in claim 1 to mean "while": "said apparatus being released when the shoulders ... engage said apparatus [while] the shank ... is inserted into said opening ... a predetermined distance." As such, Appellants' position seemingly presumes a claim construction that requires the shoulders of the blade to "engage" the apparatus while the shank is being inserted, to cause the apparatus to be "released."

On the other hand, the Examiner's position appears to be that the claim limitation at issue is satisfied by an apparatus that releases after the shank has been inserted into the opening a certain distance, when the

shoulders are touching the apparatus. Therefore, the Examiner's position construes "as" to mean "when": "said apparatus being released when the shoulders ... engage said apparatus [when] the shank ... is inserted into said opening ... a predetermined distance." As such, the Examiner's position is that the limitation is met if the blade shoulders "engage" the apparatus at the same time that the apparatus is "released."

The plain meaning of "as" includes both "while" and "when."<sup>1</sup> While the Specification describes embodiments that require the shoulders of the blade to push the sleeve portion of the apparatus in a manner to cause the release (Spec. 8:30 to 9:5), the Specification does not limit the claims to that embodiment. *See In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) ("[T]he PTO must give claims their broadest reasonable construction consistent with the specification .... Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation."). "[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *Id.* at 1379. *See also, e.g., Liebel-Flarsheim Co. v. Medrad Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (expressly rejecting the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment).

As we found above, the shank portion of the blade in Kakiuchi causes the apparatus to release when it has been inserted a predetermined distance

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<sup>1</sup> "as" defined as: "when; while; during" *Chambers 21st Century Dictionary* (retrieved from [http://www.credoreference.com/entry/chamdict/as\\_1](http://www.credoreference.com/entry/chamdict/as_1)) (last retrieved June 2, 2010).

into the opening. *See* Kakiuchi, para. 59. The release clamps the blade into a fixed position. *Id.* at 60. When clamped, the shoulders of the blade are engaged against the sleeve 59 of the apparatus. *Id.* at 73-74. Because the blade can no longer move once clamped, the shoulders of the blade must engage the apparatus when the release occurs. Thus, the release occurs when the shoulders of the blade engage the apparatus *and* when the shank portion of the blade is inserted into the opening a predetermined distance. As such, we do not find error in the Examiner's reading of claim 1 on Kakiuchi.

Appellants additionally argue that Kakiuchi does not describe "engaging the shoulders of the blade and pushing the blade shank portion outwardly when said apparatus is moved to said unclamped position." Appeal Br. 10; First Reply Br. 5; Second Reply Br. 3. In particular, Appellants argue that the "shoulders also do not push the shank portion outwardly" when the apparatus is unclamped. First Reply Br. 5; Second Reply Br. 3 (emphasis omitted). However, claim 1 does not require that the shoulders push the shank. Instead, claim 1, in the argued limitation, requires the "apparatus engaging the shoulders of the blade" and requires "pushing the blade shank portion outwardly...."

As we discuss above, Kakiuchi describes the apparatus engaging the shoulders of the blade at paragraphs 73-74. In addition, as we found above, Kakiuchi describes the apparatus pushing the blade shank portion outwardly when the apparatus is moved to an unclamped position. *See* Kakiuchi, paras. 62, 66. Claim 1 does not require that the apparatus push the shoulder portion of the blade when the apparatus is moved to an unclamped position. Thus, we are not persuaded that the Examiner erred in finding that Kakiuchi

describes an apparatus "engaging the shoulders of the blade and pushing the blade shank portion outwardly when said apparatus is moved to said unclamped position."

*Conclusion*

We are not persuaded that the Examiner erred in finding that Kakiuchi anticipates claim 1. Likewise, we do not find error in the Examiner's rejection of dependent claims 2-4.

**DECISION**

We affirm the Examiner's decision regarding claims 1-4.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

**AFFRIMED**

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